

**Before the
Federal Communications Commission
Washington, D.C. 20554**

CG Docket No. 18-152

Comments of Jay Connor

Like most U.S. residents, I receive upwards of 10 calls per day from various telemarketers selling and promoting almost every service and product imaginable. Most people, including myself, consider these calls unsolicited, unwanted and anonymous forms of harassment and distraction that take people's attention and valuable time to determine if they are calls that are wanted or needed.

As a non-lawyer citizen who files TCPA lawsuits in state court to thwart these unlawful calls, I can say with certainty it is more important than ever for the FCC to interpret the TCPA definitions and law in a manner that is consistent with the intent of Senator Hollings and the other Congressmen who drafted it. Since its inception, the priority of the statute is clear, to protect the privacy rights of consumers from unwanted calls while providing a uniform set of regulations for those who engage in telemarketing.

A telephone call is unique in that a ringing phone cannot be ignored or turned off in the same way one can avoid an email or TV commercial. Moreover, a telephone call compels the called party to give his undivided attention to the caller and on the caller's timetable. This is unique to all other forms of marketing because it puts a seller in a potential consumer's ear immediately, whether they are an existing customer or not, whether they like it or not.

This is precisely why the telemarketing industry is fighting so hard to preserve the right to make billions of automated cold calls across the country to millions of people with little regard for most people they are calling.

Automatic Telephone Dialing System (ATDS)

The TCPA defines an “automatic telephone dialing system” as “equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator, and (B) to dial such numbers.

The D.C. Circuit court determined the FCC’s interpretation of the word “capacity” for calling systems was overly broad and included the capacity of smart phones if taken literally. However, to ignore the meaning of “capacity” as it was intended in the context of prohibiting automated calls generated would be catastrophic for consumers.

A common sense approach to defining equipment with “capacity” would exclude equipment such as smart phones ordinarily used for person-to-person calls, not calls made in mass quantity.

The more narrow the exclusion the better, so as to give courts the proper authority to determine on a case-by-case basis if necessary whether or not equipment being used to transmit calls falls under the overall intent of the definitions and prohibitions under the statute. Otherwise, the floodgates will open with “TCPA compliant” custom designed dialing systems to generate billions of calls from all over the world to US consumers.

Called Party vs. Intended Recipient

In August 2013, I began receiving autodialed, pre-recorded debt collection calls for the previous subscriber of my wireless telephone number. The previous subscriber had an account with Dish Network and had fallen behind on payments. In spite of having no knowledge of the person they were trying to reach, never having a Dish account and notifying the callers of the error, they continued to call me trying to collect the debt.

I contacted Dish Network and later initiated a lawsuit against them for the unlawful calls. Dish lodged a full force defense and demanded a jury trial even though they acknowledged the calls were made to the wrong person. The judge granted my motion for a directed verdict and properly awarded trebled damages for the calls. Dish appealed the verdict and the appellate court upheld all of the statutory minimum damages and most of the trebled damages.

Dish's message seemed clear. "We will fight to deter other lawsuits even if we are wrong." The \$4,500.00 dispute took over two years to resolve and was very costly for me in time and resources. Without the clear, accurate, common sense distinction of "called party" from "intended recipient", I would have lost the lawsuit and Dish would probably still be calling me today.

As a non-lawyer, I would respectfully submit it is critical for the FCC to continue to try to interpret the plain language of the statute to reflect its original intent. We need these interpretations to represent ourselves against well-funded, predatory telemarketing companies that simply don't want to spend the money to

filter reassigned numbers from their system. To allow “called party” to include the person the caller intended to reach would turn the TCPA on its head.

Conclusion

Thank you to the Commission for requesting and considering these comments. I am available to answer any questions you have regarding these comments.

Respectfully submitted,

Jay Connor